

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Connect America Fund	)	WC Docket No. 10-90

**COMMENTS OF SACRED WIND COMMUNICATIONS, INC.  
ON PETITIONS FOR RECONSIDERATION**

Sacred Wind Communications, Inc. (“Sacred Wind”) respectfully submits these comments on the Petition for Reconsideration of the National Association of State Utility Consumer Advocates (“NASUCA”) and the Petition for Reconsideration and Clarification of the United States Telecom Association (“USTelecom”) of *the Lifeline and Link Up Reform and Modernization, Third Report and Order, Further Report and Order, and Order on Reconsideration* in the captioned proceeding.<sup>1</sup>

**DISCUSSION**

**A. Background on Sacred Wind**

Sacred Wind is a privately owned, New Mexico-based corporation formed in 2004 to introduce basic telephone and broadband services to the many thousands of unserved and underserved homes on the Navajo Reservation and near-Reservation lands in New Mexico, as

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<sup>1</sup> *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Support, Connect America Fund, Third Report and Order, Further Report and Order, and Order on Reconsideration*, 31 FCC Rcd 3962 (2016) (“Lifeline Modernization Order”).

well as to Navajo schools, businesses, and government locations, such as local Chapter houses. Sacred Wind is the only non-tribally owned rural local exchange carriers (“RLEC”) in the country wholly dedicated to serving a Tribal community, having developed a basic local and broadband infrastructure over a vast unserved tribal area of the West. Sacred Wind has a unique relationship with the Navajo Nation, with its Navajo customers, and has won national and local recognition for its approach to serving residents in a challenging geographic area.

In 2006, the company acquired from Qwest Corporation a portion of Qwest’s service territory comprising approximately 3,200 square miles in northwestern New Mexico on the Navajo Reservation and near-Reservation lands known as the “checkerboard,” as well as limited Qwest copper loop facilities in this territory. Sacred Wind serves a population of approximately 23,300, 98 percent of whom are Navajo citizens.

The population density of its service territory is about 7.3 people per square mile, one of the most sparsely populated areas in the country. A disproportionate number of Navajo households are at or below the national poverty level. The Navajo population at large is among the highest at risk in the nation for school dropout, teen pregnancy, infant mortality, teen suicide, heart disease and diabetes.

Sacred Wind is a carrier of last resort for 6,300 households, meaning that it cannot terminate or withdraw from providing telephone service unless the New Mexico Public Regulatory Commission (“PRC”) finds that another telecommunications company is able to provide service without interruption. No other such company exists in Sacred Wind’s service area at this time.

Last-mile wireline technologies are particularly ill-suited for remote Tribal lands, such as Sacred Wind’s service territory. In general, the sparse population over a vast land area makes

deployment of a wired telecommunications network cost prohibitive. For that reason, Sacred Wind has built out an alternative to a wireline network that still allows Sacred Wind to bring voice and broadband services to its service area. That alternative is an IP-based hybrid fiber/point-to-point microwave backbone network integrated with a 3.65 GHz WiMAX fixed wireless local loop (“FWLL”) access network.

For remote subscribers, the FWLL system replaces the typical copper, twisted pair distribution system with a point-to-multipoint radio access network operating on a 3.65 GHz WiMax platform. System reliability on its network approaches the network reliability of Tier 1 providers – 99.999 percent reliability (or downtime of 5 minutes per year). Sacred Wind is also operating an all-IP network, using IP-based Ethernet transmission across its entire network, including the last mile, using WiMAX IEEE 802.16 equipment.

At the time of Sacred Wind’s acquisition of Qwest Corporation’s system on Navajo lands in late 2006, only 42 residential and business customers, less than 2 percent of Sacred Wind’s acquired customer base, living along the municipal boundaries of Gallup and Farmington, New Mexico, had access to DSL services at download rates between 256 Kbps and 512 Kbps. Today, the use of WiMAX technology and the managed nature of IP transmission throughout the Sacred Wind network provide residential subscribers with wireline quality service and broadband speeds of 4 Mbps download, or higher, and some customers have access to 10/1 Mbps service. Having built a middle and last mile fixed wireless network interfaced with the older copper landlines that it acquired in 2006, and recently reinforced in areas with fiber optic middle mile, Sacred Wind has achieved its initial objectives of offering basic and advanced telecommunications services to nearly 90 percent of the Tribal homes in its service territory that have electric service.

The Commission’s Lifeline and Universal Service Fund/Connect America Fund programs, along with low interest loans from the telecommunications and broadband loan and grant programs

of the U.S. Department of Agriculture’s Rural Utilities Service, have been critical to Sacred Wind’s ability to bring voice and broadband services to its Navajo customer base.<sup>2</sup> These programs have been used successfully, efficiently, and conscientiously by Sacred Wind to achieve the Commission’s goals on Navajo Lands. With respect to the Lifeline program in particular, over 80 percent of Sacred Wind’s customers qualify for the Tribal Lifeline Program, and a majority of its customers are Tribal Lifeline Customers.

**B. The NASUCA Petition**

The NASUCA Petition seeks reconsideration of the Commission’s decision to phase-out Lifeline support for voice-only service, arguing that it will “eliminate the current voice service that millions of customers continue to depend on” and that it will force current voice-only customers to subscribe to higher-cost broadband service in order to have voice service.”<sup>3</sup> NASUCA is concerned that forcing Lifeline customers to move to higher cost bundles creates a risk that these historically voice-only customers will lose service altogether, including in the event of disconnection for non-payment.<sup>4</sup>

Sacred Wind shares these concerns and urges the Commission to continue Lifeline support for voice-only service at historic levels, without the phase-down of voice-only support adopted in the Order. Sacred Wind has an embedded base of Navajo-speaking, voice-only elderly customers who live in extremely remote Tribal areas. These Tribal Lifeline customers currently obtain voice service at no cost, and are precisely the customers identified by NASUCA that “can only afford minimal, if any costs.”<sup>5</sup> No doubt, for these customers, the difference in

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<sup>2</sup> Sacred Wind expanded its network through a \$55 Million low interest loan from the USDA-RUS. The company has just received approval for a second USDA-RUS loan to expand and improve its broadband infrastructure over the next three years with which Sacred Wind intends to increase broadband availability of no less than 10 Mbps download to 90 percent or more of its customer base.

<sup>3</sup> NASUCA Petition at 3.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.*

cost between a stand-alone voice service, which today with enhanced Tribal support is provided at no monthly cost to Lifeline subscribers,<sup>6</sup> and a broadband bundle approaching \$50 per month or more, that includes services that they may not want and likely will not use, will be the difference between having dependable voice service and no service at all. Rather than requiring these voice-only Lifeline customers to move to a voice-broadband bundle, the Commission should reconsider its voice-only phase-down as urged by NASUCA, and grandfather existing voice-only customers at the full \$9.25 Lifeline rate, without regard to the phase-down schedule set forth in new Section 54.403(a)(2) of the Rules.<sup>7</sup>

At most, the Commission should impose a phase-down for voice-only customers based on the phased down rate in place at the time the customer subscribes. In other words, the phase-down adopted in Section 54.403(a)(2) should apply based on when the customer subscribes, and that customer should be grandfathered at that rate, rather than having a voice-only customer's Lifeline support be reduced over the five-year phase-down period.

Finally, the Commission should clarify that regardless of the Lifeline phase-down provided in Section 54.403(a)(2), enhanced tribal support will continue to be available to voice-only Tribal customers, regardless of the phase-down, including after December 1, 2021. In particular, Sacred Wind notes that new Section 54.403(a)(3),<sup>8</sup> provides that "Additional federal Lifeline support of up to \$25 per month will be made available to an eligible telecommunications carrier providing Lifeline service to an eligible resident of Tribal lands. . . ." Section 54.403(a)(2)(iv) however, provides that after December 1, 2021, "standalone voice service . . . will *not* be eligible for Lifeline support" except where under paragraph (v), the provider is the

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<sup>6</sup> *Id.* at 4.

<sup>7</sup> *See* 47 C.F.R. § 54.403(a)(2).

<sup>8</sup> 47 C.F.R. § 54.403(a)(3).

only Lifeline provider in a particular census block where a customer is located.<sup>9</sup> It is imperative that the Commission make clear that this provision was not intended to eliminate the enhanced Tribal support for voice-only customers after December 1, 2021.

### **C. The USTelecom Petition**

USTelecom asks the Commission to reconsider its exception to the fixed provider minimum service requirement of 10 Mbps down and 1 Mbps up, which requires a provider that cannot provide 10/1 Mbps service “in a given area”, to provide the “highest performing generally available residential offering” offered in that area that meets or exceeds 4/1 Mbps.<sup>10</sup> USTelecom asks that the Commission should instead require providers to offer 4/1 Mbps or better service to Lifeline customers, rather than be required to offer service at the “highest performing generally available residential offering” at or above 4/1 Mbps.<sup>11</sup> USTelecom argues that administrative and logistical complexities make the Commission’s exception standard unworkable. USTelecom also argues that it is unclear whether the “given area” to which the speed standard and exception applies, would be on a location by location basis or on the basis of some other geographic standard, and, that the Commission should clarify the geographic scope of the speed standard.<sup>12</sup>

Sacred Wind agrees with USTelecom that requiring providers that are below 10/1 Mbps to provide service at the “highest performing generally available residential offering” in the area would be an administrative nightmare with little, if any, benefit to the consumer.

For example, in Sacred Wind’s case, a potential broadband customer not located near Sacred Wind copper facilities requires Sacred Wind to test the location for FWLL signal connectivity. This task is performed on an individual basis at the time the customer expresses an interest in

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<sup>9</sup> See 47 C.F.R. § 54.403(a)(2)(iv) (emphasis added).

<sup>10</sup> See USTelecom Petition at 15, quoting 47 C.F.R. § 54.408(d)(iii).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 16.

obtaining services from Sacred Wind. The connectivity to Sacred Wind's FWLL network is a function of distance to base station, line-of-sight due to terrain, radio equipment located at the base station and/or spectrum, and the backhaul capacity from the base station to the Sacred Wind backbone. In areas where it has not yet deployed 10/1 Mbps, but has a minimum of 4/1 Mbps deployed, there are a range of speeds that might be incrementally deployed above 4/1 Mbps due to the combination of fixed wireless-related factors mentioned above. Sacred Wind should have the flexibility to provide a Lifeline offering to any such customers in these areas at the 4/1 Mbps speed, until 10/1 Mbps becomes available, and only then provide a Lifeline offering at the 10/1 Mbps speed.

It makes no sense to require Lifeline providers to provide service at speeds that may become available between 4/1 Mbps and 10/1 Mbps, and Sacred Wind agrees with USTelecom that imposing such a requirement may well discourage providers from offering Lifeline service due to the complexities associated with ongoing marketing, accounting, and regulatory reporting obligations associated with the incremental offerings. In addition, the Commission should allow a reasonable phase-in of at least 6 months after the 10/1 Mbps speed becomes available, before a provider is required to make that offering as its Lifeline service.

Sacred Wind also agrees with USTelecom that the Commission should clarify what it means by a particular speed of service being available in a given area.<sup>13</sup> From Sacred Wind's perspective, the question is not whether particular minimum standards are available "in a given area," rather the question is whether particular minimum standards are available "in a given area *at a particular customer location*." Thus under this clarification, if 10/1 Mbps is unavailable at a particular customer location, but 4/1 Mbps is available in an area *at that customer location*,

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<sup>13</sup> *Id.*

providers should be eligible to provide Lifeline service to that customer location at the 4/1 Mbps speed.

Finally, as a line-of-sight solution for many Tribal members who live in a remote and challenging topography, fixed wireless technology is far less costly to install and maintain than landline and, in many areas, is superior to a mobile wireless system where the topography impedes a centrally emitted wireless signal. The costs of building and operating such a FWLL system within such a sparsely populated, vast land are still higher than those of most rural carriers where the terrain is flatter, the population more concentrated, and the acquisition or use of lands for telecommunications facilities do not involve the challenges of dealing with multiple governmental and Tribal jurisdictions. Having to serve customers living within a culture different from this country's majority also requires that Sacred Wind approach its customers in a manner that its customers require, including a sensitivity to the land, to its customers' acceptance of technology and to their own financial circumstances.

One size fits all solutions for the delivery of specific broadband speeds and specific benchmark rates, following national investment and expense caps, quite simply, do not work on Navajo Lands, and those caps will greatly impede Sacred Wind's ability to offer Lifeline-supported broadband packages to its Tribal customers, as envisioned in the Lifeline Modernization Order. Sacred Wind will address these points further in connection with reconsideration petitions pending in the *Rate-of-Return Reform Order* proceeding.<sup>14</sup>

As noted, a disproportionate percent of Sacred Wind's Navajo subscriber base are at or below the national poverty level, and live in some of the most remote, sparsely populated, and difficult to reach areas in the Nation. These factors, as recognized in the Lifeline Modernization

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<sup>14</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016).



Order, contribute to the “disproportionately low adoption of telecommunication services on Tribal lands, especially those in remote and underserved areas.”<sup>15</sup> As the Commission notes, “there is much more progress to be made in increasing penetration and adoption of Lifeline services” and “continuing to support low-income consumers living on Tribal lands” outweighs other considerations, such as administrative difficulties.<sup>16</sup>

Here, in reconsidering the exception criteria for 10/1 Mbps service, the Commission should specifically consider whether a separate exemption should be adopted for Tribal customers, given the extreme poverty of certain Tribal populations and the disproportionately high cost of providing service on Tribal lands, as has been Sacred Wind’s experience. In Sacred Wind’s case, we would expect that most of its broadband customers would opt for an unsupported, lower-cost 4/1 Mbps service, than a supported 10/1 Mbps service that costs the customer \$50 per month or more. Indeed a supported 4/1 Mbps service, with enhanced Tribal support, could be available for about \$10 per month, which would both be extremely attractive, and likely significantly increase penetration.

Sacred Wind urges the Commission to address this issue on reconsideration of the minimum service exception criteria, and at a minimum, make clear that specific waivers will be available to allow for the provision of 4/1 Mbps service on Tribal lands, even where 10/1 Mbps service may be available. Alternatively, the Commission should separately address this issue in connection with various pending Tribal issues from the 2015 Lifeline FNPRM and its ongoing consideration of advancing broadband deployment on Tribal lands.<sup>17</sup>

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<sup>15</sup> Lifeline Modernization Order, ¶ 206.

<sup>16</sup> *Id.*, ¶ 211.

<sup>17</sup> *Id.*

## **CONCLUSION**

Thanks to the Commission's policies and programs supporting universal service, Sacred Wind has been able to bridge the telecommunications and broadband divide in one of the hardest to serve areas and to extend an equal opportunity of access and information to one of the lowest income communities of our Nation. The outstanding success of the Lifeline program in the Eastern Agency of the Navajo Nation is illustrated with statistics in the comments of the Navajo Nation Telecommunications Regulatory Commission in the Connect America Fund Rate of Return proceeding.<sup>18</sup> The comments illustrate how a modest change in a program can have such an impact in a region and on the Navajo People living in an extreme high cost area. In supporting the Petitions for Reconsideration Sacred Wind is seeking to continue the success of the Commission's reforms and of its service to Tribal members by minimizing the impact on the most vulnerable community in New Mexico and on Sacred Wind's strong record of quality service to its customers.

Respectfully submitted,

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<sup>18</sup> See *Reply Comments of the Navajo Nation Telecommunications Regulatory Commission to Further Notice of Proposed Rulemaking*, filed in WC Dockets No. 10-90 and 14-58, and CC Docket No. 01-92 (Filed June 15, 2016).